



---

# **Civil Justice Committee**

**March 15, 2006  
10:00 AM – 11:00 AM  
24 House Office Building**

# **Committee Action**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

### Civil Justice Committee

**Start Date and Time:** Wednesday, March 15, 2006 10:00 am

**End Date and Time:** Wednesday, March 15, 2006 11:00 am

**Location:** 24 HOB

**Duration:** 1.00 hrs

#### Consideration of the following bill(s):

HB 789 CS Damage Prevention and Safety for Underground Facilities by Murzin  
HB 907 Liens for Recovering, Towing, or Storing Vehicles and Vessels by Machek  
HB 1019 Deceptive and Unfair Trade Practices by Pickens  
HB 1047 Parental Relocation with a Child by Stargel  
HB 1141 Conveyances of Land by Stargel  
HB 1163 Vacation and Timeshare Plans by Mealor

#### Consideration of the following proposed committee bill(s):

PCB CJ 06-02 -- Adoption Records

**NOTICE FINALIZED on 03/13/2006 16:02 by Hay.Tracey**

## COMMITTEE MEETING REPORT

### Civil Justice Committee

3/15/2006 10:00:00AM

Location: 24 HOB

#### Attendance:

	<i>Present</i>	<i>Absent</i>	<i>Excused</i>
Mark Mahon (Chair)	X		
Dean Cannon	X		
Marti Coley	X		
Carl Domino	X		
Arthenia Joyner	X		
Irving Slosberg	X		
John Stargel	X		
<b>Totals:</b>	<b>7</b>	<b>0</b>	<b>0</b>

Committee meeting was reported out: Wednesday, March 15, 2006 12:25:48PM

# COMMITTEE MEETING REPORT

## Civil Justice Committee

3/15/2006 10:00:00AM

Location: 24 HOB

HB 789 CS : Damage Prevention and Safety for Underground Facilities

☒ Favorable With Committee Substitute

	Yea	Nay	No Vote	Absentee Yea	Absentee Nay
Dean Cannon	X				
Marti Coley	X				
Carl Domino	X				
Arthenia Joyner	X				
Irving Slosberg	X				
John Stargel	X				
Mark Mahon (Chair)	X				
Total Yeas: 7		Total Nays: 0			

### Appearances:

Damage Prevention and Safety of Underground Facilities

David B. Erwin (Lobbyist) - Proponent

Sunshine State One-Call of Florida, Inc.

127 Riversink Rd.

Crawfordville FL 32327

Phone: 850-926-9331

Damage Prevention and Safety of Underground Facilities

Bruce Kershner (Lobbyist) - Proponent

Underground Utility Contractors of FL

231 West Bay Ave.

Longwood FL 32750

Phone: 407-830-1880

Committee meeting was reported out: Wednesday, March 15, 2006 12:25:48PM

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

Bill No. **HB 0789 CS**

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

A 1  
w/o

Council/Committee hearing bill: Civil Justice Committee  
Representative(s) Murzin offered the following:

**Amendment (with title amendments)**

Between line(s) 84 and 85 insert:

(f) Foster the awareness of federal laws and regulations that promote safety with respect to underground facilities, including, but not limited to, the Federal Pipeline Safety Act of 1968, as amended, the Pipeline Safety Improvement Act of 2002, OSHA Standard 1926.651, and the National Electric Safety Code, ANSI C-2, by requiring and facilitating the advance notice of activities by those who engage in excavation or demolition operations.

===== T I T L E A M E N D M E N T =====

Remove line 11 and insert:

or mark underground facilities; providing purpose of the Underground Facility Damage Prevention and Safety Act; amending s. 556.102, F.S.;

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2 (for drafter's use only)

Bill No. **HB 0789 CS**

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

A w/o 2

Council/Committee hearing bill: Civil Justice Committee  
Representative(s) Murzin offered the following:

**Amendment**

Remove line 389 and insert:  
tools under s. 556.108(4)(c) or pursuant to s. 556.108(5) is  
liable for any damage

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 3 (for drafter's use only)

Bill No. **HB 0789 CS**

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

A 3  
w/o

Council/Committee hearing bill: Civil Justice Committee

Representative(s) Murzin offered the following:

**Amendment**

Remove line(s) 417-419 and insert:  
the provisions of this act. Citations shall ~~may~~ be hand-  
delivered ~~issued~~ to any employee of the excavator or member  
operator who is ~~directly~~ involved in the non-criminal  
infraction. The citation shall be issued in the name of the  
excavator or member operator, whichever is applicable.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 4 (for drafter's use only)

Bill No. HB 0789 CS

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

A 4  
w/o

Council/Committee hearing bill: Civil Justice Committee  
Representative(s) Murzin offered the following:

**Amendment**

Remove line(s) 423-456 and insert:  
infraction is \$250 plus court costs, except as otherwise  
provided in this section. If a citation is issued by a local law  
enforcement officer, a local government code inspector, or a  
code enforcement officer, 80 percent of the civil penalty  
collected by the clerk of the court shall be distributed to the  
local governmental entity whose employee issued the citation and  
20 percent of the penalty shall be retained by the clerk to  
cover administrative costs, in addition to other court costs. If  
a citation is issued by a state law enforcement officer, the  
civil penalty collected by the clerk shall be retained by the  
clerk for deposit into the fine and forfeiture fund established  
pursuant to s. 142.01. Any person who fails to appear or  
otherwise properly respond to a citation issued pursuant to  
paragraph (d) shall, in addition to the citation, be charged  
with the offense of failing to respond to such citation and,  
upon conviction, commits ~~be guilty of~~ a misdemeanor of the

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 4 (for drafter's use only)

second degree, punishable as provided in s. 775.082 or s. 775.083. A written warning to this effect shall be provided at the time any citation is issued pursuant to paragraph (b).

(d) Any person cited for an infraction under paragraph (a), unless required to appear before the county court, may:

1. Post a bond, which shall be equal in amount to the applicable civil penalty plus court costs; or

2. Sign and accept a citation indicating a promise to appear before the county court.

The person issuing the citation ~~officer~~ may indicate on the citation the time and location of the scheduled hearing and shall indicate the applicable civil penalty.

(e) Any person charged with a noncriminal infraction under paragraph (a), unless required to appear before the county court, may:

1. Pay the civil penalty plus court costs, in

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 5 (for drafter's use only)

Bill No. HB 0789 CS

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

A 5  
w/o

Council/Committee hearing bill: Civil Justice Committee  
Representative(s) Murzin offered the following:

**Amendment (with directory and title amendments)**

Remove line(s) 504-522 and insert:

(1) Any excavation or demolition performed by the owner of  
a single-family residential property, not including property  
that is subdivided or is to be subdivided into more than one  
single-family residential property; or for such owner by a  
member operator when such excavation or demolition is made  
entirely on such land, and only up to a depth of 10 inches;  
provided due care is used and there is no encroachment on any  
member operator's right-of-way, easement, or permitted use.

(4) Any excavation of 18 inches or less for:

(a) Surveying public or private property by surveyors or  
mappers as defined in chapter 472 and services performed by a  
pest control licensee under chapter 482, excluding marked  
rights-of-way, marked easements, or permitted uses where marked,  
if provided mechanized equipment is not used in the process of  
such surveying or pest control services and the surveying or  
pest control services are ~~is~~ performed in accordance with the

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 5 (for drafter's use only)

practice rules established under s. 472.027 or s. 482.051,  
respectively; or

(b) Maintenance activities performed by a state agency and  
its employees when such activities are within the right-of-way  
of a public road; however, provided, if a member operator has  
permanently marked facilities on such right-of-way, ~~no~~  
mechanized equipment may not be used without first providing  
notification; or

(c) Locating, repairing, connecting, adjusting, or routine  
maintenance of a private or public underground facility by an  
excavator, if the excavator is performing such work for the  
current owner or future owner of the underground facility and if  
mechanized equipment is not used.

===== D I R E C T O R Y A M E N D M E N T =====

Remove line 499 and insert:

Section 8. Subsections (1), (4), and (5) of section  
556.108,

===== T I T L E A M E N D M E N T =====

Remove line 44 and insert:

providing for excavation or demolition performed by the owner of  
a single-family residential property; providing that certain  
excavators are exempt from

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 6 (for drafter's use only)

Bill No. **HB 0789 CS**

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

A 6

Council/Committee hearing bill: Civil Justice Committee  
Representative(s) Joyner offered the following:

**Amendment (with directory and title amendments)**

Remove line(s) 537-548

===== D I R E C T O R Y A M E N D M E N T =====

Remove line 500-501 and insert:

Florida Statutes, are amended to read:

===== T I T L E A M E N D M E N T =====

Remove line 46-48 and insert:

not used; exempting pest control services; providing an  
effective date.

## COMMITTEE MEETING REPORT

### Civil Justice Committee

3/15/2006 10:00:00AM

Location: 24 HOB

HB 907 : Liens for Recovering, Towing, or Storing Vehicles and Vessels

☒ Favorable With Committee Substitute

	Yea	Nay	No Vote	Absentee Yea	Absentee Nay
Dean Cannon	X				
Marti Coley	X				
Carl Domino	X				
Arthenia Joyner	X				
Irving Slosberg	X				
John Stargel	X				
Mark Mahon (Chair)	X				
Total Yeas: 7		Total Nays: 0			

#### Appearances:

Liens for Recovering, Towing, or Storing Vehicles and Vessels

Mike Seamen (Lobbyist) - Proponent

Professional Wrecker Operators of Florida

4718 Edgewater Dr.

Orlando FL 32804

Phone: 407-402-1040

Committee meeting was reported out: Wednesday, March 15, 2006 12:25:48PM

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

Bill No. HB 0907

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

A 1  
w/o

Council/Committee hearing bill: Civil Justice Committee  
Representative(s) Machek offered the following:

**Amendment (with title amendment)**

Remove everything after the enacting clause and insert:  
Section 1. Paragraph (c) of subsection (1) of section  
125.0103, Florida Statutes, is amended to read:  
125.0103 Ordinances and rules imposing price controls;  
findings required; procedures.--

(1)

(c) 1. Counties must establish maximum rates which may be  
charged on the towing of vehicles from or immobilization of  
vehicles on private property, removal and storage of wrecked or  
disabled vehicles from an accident scene or for the removal and  
storage of vehicles, in the event the owner or operator is  
incapacitated, unavailable, leaves the procurement of wrecker  
service to the law enforcement officer at the scene, or  
otherwise does not consent to the removal of the vehicle.  
However, if a municipality chooses to enact an ordinance  
establishing the maximum fees for the towing or immobilization  
of vehicles as described in paragraph (b), the county's  
ordinance shall not apply within such municipality.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

23        2. Beginning July 1, 2007, and notwithstanding any other  
24 provision of law, in any county which has not adopted an .  
25 ordinance establishing the maximum rates which may be charged  
26 for the towing and storage of vehicles as required by s.  
27 125.0103 and s. 166.043, such rates shall be equal to the rates  
28 established by the Division of Florida Highway Patrol under s.  
29 321.051, and adjusted annually to reflect the consumer price  
30 index. No county may adopt an ordinance establishing a rate  
31 which is less than that rate established by the Division of  
32 Florida Highway Patrol which shall also be adjusted annually to  
33 reflect the consumer price index.

34        Section 2. Paragraph (c) of subsection (1) of section  
35 166.043, Florida Statutes, is amended to read:

36        166.043 Ordinances and rules imposing price controls;  
37 findings required; procedures.--

38        (1)

39        (c)1. Counties must establish maximum rates which may be  
40 charged on the towing of vehicles from or immobilization of  
41 vehicles on private property, removal and storage of wrecked or  
42 disabled vehicles from an accident scene or for the removal and  
43 storage of vehicles, in the event the owner or operator is  
44 incapacitated, unavailable, leaves the procurement of wrecker  
45 service to the law enforcement officer at the scene, or  
46 otherwise does not consent to the removal of the vehicle.  
47 However, if a municipality chooses to enact an ordinance  
48 establishing the maximum fees for the towing or immobilization  
49 of vehicles as described in paragraph (b), the county's  
50 ordinance established under s. 125.0103 shall not apply within  
51 such municipality.

52        2. Beginning July 1, 2007, and notwithstanding any other  
53 provision of law, in any county which has not adopted an

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

54 ordinance establishing the maximum rates which may be charged  
55 for the towing and storage of vehicles as required by s.  
56 125.0103 and s. 166.043, such rates shall be equal to the rates  
57 established by the Division of Florida Highway Patrol under s.  
58 321.051, and adjusted annually to reflect the consumer price  
59 index. No county may adopt an ordinance establishing a rate  
60 which is less than that rate established by the Division of  
61 Florida Highway Patrol which shall also be adjusted annually to  
62 reflect the consumer price index.

63 Section 3. Subsection (2) of section 321.051, Florida  
64 Statutes, is amended to read:

65 321.051 Florida Highway Patrol wrecker operator system;  
66 penalties for operation outside of system.--

67 (2) The Division of Florida Highway Patrol of the  
68 Department of Highway Safety and Motor Vehicles is authorized to  
69 establish within areas designated by the patrol a wrecker  
70 operator system using qualified, reputable wrecker operators for  
71 removal and storage of wrecked or disabled vehicles from a crash  
72 scene or for removal and storage of abandoned vehicles, in the  
73 event the owner or operator is incapacitated or unavailable or  
74 leaves the procurement of wrecker service to the officer at the  
75 scene. All reputable wrecker operators shall be eligible for use  
76 in the system provided their equipment and drivers meet  
77 recognized safety qualifications and mechanical standards set by  
78 rules of the Division of Florida Highway Patrol for the size of  
79 vehicle it is designed to handle. The division is authorized to  
80 limit the number of wrecker operators participating in the  
81 wrecker operator system, which authority shall not affect  
82 wrecker operators currently participating in the system  
83 established by this section. The division must ~~is authorized to~~  
84 establish maximum rates for the towing and storage of vehicles

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

removed at the division's request, where such rates have not been set by a county or municipality pursuant to s. 125.0103 or s. 166.043. These rates must be adjusted annually based on the consumer price index. Such rates shall not be considered rules for the purpose of chapter 120; however, the department shall establish by rule a procedure for setting such rates. Any provision in chapter 120 to the contrary notwithstanding, a final order of the department denying, suspending, or revoking a wrecker operator's participation in the system shall be reviewable in the manner and within the time provided by the Florida Rules of Appellate Procedure only by a writ of certiorari issued by the circuit court in the county wherein such wrecker operator resides.

Section 4. Paragraph (d) is added to subsection (1), subsection (4), subsection (6), paragraphs (b) and (c) of subsection (11), paragraph (d) of subsection (12), and paragraphs (a) and (g) of subsection (13), of section 713.78, Florida Statutes, are amended to read:

713.78 Liens for recovering, towing, or storing vehicles and vessels.--

(1) For the purposes of this section, the term:

(d) "Department" means the Department of Highway Safety and Motor Vehicles.

(4)(a) Any person regularly engaged in the business of recovering, towing, or storing vehicles or vessels who comes into possession of a vehicle or vessel pursuant to subsection (2), and who claims a lien for recovery, towing, or storage services, shall give notice to the registered owner, the insurance company insuring the vehicle notwithstanding the provisions of s. 627.736, and to all persons claiming a lien thereon, by submitting an application for notifications to the

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

116 department on a form prescribed by the department within 7  
117 business days after the date of storage of the vehicle or vessel  
118 ~~as disclosed by the records in the Department of Highway Safety~~  
119 ~~and Motor Vehicles or of a corresponding agency in any other~~  
120 ~~state.~~

121 (b) Whenever any law enforcement agency authorizes the  
122 removal of a vehicle or vessel or whenever any towing service,  
123 garage, repair shop, or automotive service, storage, or parking  
124 place notifies the law enforcement agency of possession of a  
125 vehicle or vessel pursuant to s. 715.07(2)(a)2., the applicable  
126 law enforcement agency shall contact the department ~~of Highway~~  
127 ~~Safety and Motor Vehicles~~, or the appropriate agency of the  
128 state of registration, if known, within 24 hours through the  
129 medium of electronic communications, giving the full description  
130 of the vehicle or vessel. Upon receipt of the full description  
131 of the vehicle or vessel, the department shall search its files  
132 to determine the owner's name, the insurance company insuring  
133 the vehicle or vessel, and whether any person has filed a lien  
134 upon the vehicle or vessel as provided in s. 319.27(2) and (3)  
135 and notify the applicable law enforcement agency within 72  
136 hours. The person in charge of the towing service, garage,  
137 repair shop, or automotive service, storage, or parking place  
138 shall obtain such information from the applicable law  
139 enforcement agency within 5 days after the date of storage and  
140 shall give notice pursuant to paragraph (a). ~~The department may~~  
141 ~~release the insurance company information to the requestor~~  
142 ~~notwithstanding the provisions of s. 627.736.~~

143 (c) Upon receipt of a valid and complete application for  
144 notifications, the required notification fee of \$4, and service  
145 fees as indicated in s. 320.04, the department shall notify  
146 ~~Notice by certified mail, return receipt requested, shall be~~

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

147 ~~sent within 7 business days after the date of storage of the~~  
148 ~~vehicle or vessel to the registered owner, the insurance company~~  
149 ~~insuring the vehicle notwithstanding the provisions of s.~~  
150 ~~627.736, and all persons of record claiming a lien against the~~  
151 ~~vehicle or vessel. The notification ~~it shall state the fact of~~~~  
152 ~~indicate the company or individual who has possession of the~~  
153 ~~vehicle or vessel, that a lien as provided in subsection (2) is~~  
154 ~~claimed, that charges have accrued and the amount thereof, that~~  
155 ~~the lien is subject to enforcement pursuant to law, and that the~~  
156 ~~owner or lienholder, if any, has the right to a hearing as set~~  
157 ~~forth in subsection (5), and that any vehicle or vessel which~~  
158 ~~remains unclaimed, or for which the charges for recovery,~~  
159 ~~towing, or storage services remain unpaid, may be sold free of~~  
160 ~~all prior liens after 35 days if the vehicle or vessel is more~~  
161 ~~than 3 years of age or after 50 days if the vehicle or vessel is~~  
162 ~~3 years of age or less.~~

163 (d) ~~If the department is unable ~~attempts~~ to locate the~~  
164 ~~name and address of the owner or lienholder ~~prove unsuccessful,~~~~  
165 ~~the department shall notify the towing-storage operator. Upon~~  
166 ~~receipt of such notification from the department, the towing-~~  
167 ~~storage operator shall, after 7 working days, excluding Saturday~~  
168 ~~and Sunday, of conduct a good faith effort through the initial~~  
169 ~~tow or storage, notify the public agency of jurisdiction in~~  
170 ~~writing by certified mail or acknowledged hand delivery that the~~  
171 ~~towing storage company has been unable to locate the name and~~  
172 ~~address of the owner or lienholder and a physical search of the~~  
173 ~~vehicle or vessel to attempt to determine ~~has disclosed no~~~~  
174 ~~ownership information and a good faith effort has been made. If~~  
175 ~~the physical search reveals a potential owner, lienor, or~~  
176 ~~insurance company, the towing-storage operator shall furnish~~

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

notice of the sale to such owner, lienor, or insurance company  
by certified mail.

(e) For purposes of this subsection ~~paragraph~~ and  
subsection (9), "good faith effort" means that the following  
checks have been performed by the company to establish prior  
state of registration and for title:

1. Check of vehicle or vessel for any type of tag, tag  
record, temporary tag, or regular tag.

2. Check of law enforcement report for tag number or other  
information identifying the vehicle or vessel, if the vehicle or  
vessel was towed at the request of a law enforcement officer.

3. Check of trip sheet or tow ticket of tow truck operator  
to see if a tag was on vehicle or vessel at beginning of tow, if  
private tow.

4. If there is no address of the owner on the impound  
report, check of law enforcement report to see if an out-of-  
state address is indicated from driver license information.

5. Check of vehicle or vessel for inspection sticker or  
other stickers and decals that may indicate a state of possible  
registration.

6. Check of the interior of the vehicle or vessel for any  
papers that may be in the glove box, trunk, or other areas for a  
state of registration.

7. Check of vehicle for vehicle identification number.

8. Check of vessel for vessel registration number.

9. Check of vessel hull for a hull identification number  
which should be carved, burned, stamped, embossed, or otherwise  
permanently affixed to the outboard side of the transom or, if  
there is no transom, to the outmost seaboard side at the end of  
the hull that bears the rudder or other steering mechanism.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

(6) Any vehicle or vessel which is stored pursuant to subsection (2) and which remains unclaimed, or for which reasonable charges for recovery, towing, or storing remain unpaid, and any contents not released pursuant to subsection (10), may be sold by the owner or operator of the storage space for such towing or storage charge after 35 days from the time the vehicle or vessel is stored therein if the vehicle or vessel is more than 3 years of age or after 50 days following the time the vehicle or vessel is stored therein if the vehicle or vessel is 3 years of age or less. The sale shall be at public auction for cash. ~~If the date of the sale was not included in the notice required in subsection (4), notice of the sale shall be given to the person in whose name the vehicle or vessel is registered and to all persons claiming a lien on the vehicle or vessel as shown on the records of the Department of Highway Safety and Motor Vehicles or of the corresponding agency in any other state. Notice shall be sent by certified mail, return receipt requested, to the owner of the vehicle or vessel and the person having the recorded lien on the vehicle or vessel at the address shown on the records of the registering agency and shall be mailed not less than 15 days before the date of the sale. After diligent search and inquiry, if the name and address of the registered owner or the owner of the recorded lien cannot be ascertained, the requirements of notice by mail may be dispensed with.~~ In addition to the notice by mail, public notice of the time and place of sale shall be made by publishing a notice thereof one time, at least 10 days prior to the date of the sale, in a newspaper of general circulation in the county in which the sale is to be held. The public notice shall include the vehicle or vessel identification or hull number, a description of the vehicle or vessel including make, model, and

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

238 year of manufacture, and, if known, the name of the registered  
239 owner of the vehicle or vessel. The proceeds of the sale, after  
240 payment of reasonable towing and storage charges, and costs of  
241 the sale, in that order of priority, shall be deposited with the  
242 clerk of the circuit court for the county if the owner is  
243 absent, and the clerk shall hold such proceeds subject to the  
244 claim of the person legally entitled thereto. The clerk shall be  
245 entitled to receive 5 percent of such proceeds for the care and  
246 disbursement thereof. The certificate of title issued under this  
247 law shall be discharged of all liens unless otherwise provided  
248 by court order.

249 (11)

250 (b) ~~The department of Highway Safety and Motor Vehicles~~  
251 shall charge a fee of \$3 for each certificate of destruction. A  
252 service charge of \$4.25 shall be collected and retained by the  
253 tax collector who processes the application.

254 ~~(c) The Department of Highway Safety and Motor Vehicles~~  
255 ~~may adopt such rules as it deems necessary or proper for the~~  
256 ~~administration of this subsection.~~

257 (12)

258 (d) ~~Employees of the department of Highway Safety and~~  
259 ~~Motor Vehicles~~ and law enforcement officers are authorized to  
260 inspect the records of any person regularly engaged in the  
261 business of recovering, towing, or storing vehicles or vessels  
262 or transporting vehicles or vessels by wrecker, tow truck, or  
263 car carrier, to ensure compliance with the requirements of this  
264 section. Any person who fails to maintain records, or fails to  
265 produce records when required in a reasonable manner and at a  
266 reasonable time, commits a misdemeanor of the first degree,  
267 punishable as provided in s. 775.082 or s. 775.083.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

(13)(a) Upon receipt by the department of ~~Highway Safety and Motor Vehicles~~ of written notice from a wrecker operator who claims a wrecker operator's lien under paragraph (2)(c) or paragraph (2)(d) for recovery, towing, or storage of an abandoned vehicle or vessel upon instructions from any law enforcement agency, for which a certificate of destruction has been issued under subsection (11), the department shall place the name of the registered owner of that vehicle or vessel on the list of those persons who may not be issued a license plate or revalidation sticker for any motor vehicle under s.

320.03(8). If the vehicle or vessel is owned jointly by more than one person, the name of each registered owner shall be placed on the list. The notice of wrecker operator's lien shall be submitted on forms provided by the department, which must include:

1. The name, address, and telephone number of the wrecker operator.

2. The name of the registered owner of the vehicle or vessel and the address to which the wrecker operator provided notice of the lien to the registered owner under subsection (4).

3. A general description of the vehicle or vessel, including its color, make, model, body style, and year.

4. The vehicle identification number (VIN); registration license plate number, state, and year; validation decal number, state, and year; vessel registration number; hull identification number; or other identification number, as applicable.

5. The name of the person or the corresponding law enforcement agency that requested that the vehicle or vessel be recovered, towed, or stored.

6. The amount of the wrecker operator's lien, not to exceed the amount allowed by paragraph (b).

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

(g) The department ~~of Highway Safety and Motor Vehicles~~  
may adopt rules pursuant to ss. 120.536(1) and 120.54 to  
implement this section ~~subsection~~.

Section 6. This act shall take effect July 1, 2006.

===== T I T L E A M E N D M E N T =====

Remove the entire title and insert:

An act relating to recovering, towing, or storing vehicles  
and vessels; amending s. 125.0103, F.S.; providing  
counties which have not established maximum rates for the  
towing and storage of vehicles shall have the rate  
established by the Florida Highway Patrol; amending s.  
166.043, F.S.; providing counties which have not  
established maximum rates for the towing and storage of  
vehicles shall have the rate established by the Florida  
Highway Patrol; amending s. 321.051, F.S.; requiring the  
Florida Highway Patrol to set presumptive towing and  
storage rates for the removal of wrecked or disabled  
vehicles; requiring future rate increases based on the  
consumer price index; amending s. 713.78, F.S.; creating a  
definition; requiring the Department of Highway Safety and  
Motor Vehicles to notify by mail the owner, insurance  
company, and persons claiming a lien against the vehicle  
or vessel that the vehicle or vessel is subject to a lien  
for recovery, towing, or storage; requiring a fee;  
removing requirement that towing-storage operator notify

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

330 the owner, insurance company, and persons claiming a lien  
331 against the vehicle or vessel; revising certain public  
332 notice requirements relating to the sale of unclaimed  
333 vehicles or vessels; providing for rulemaking; providing  
334 an effective date.

## COMMITTEE MEETING REPORT

### Civil Justice Committee

3/15/2006 10:00:00AM

Location: 24 HOB

HB 1019 : Deceptive and Unfair Trade Practices

☒ Favorable With Committee Substitute

	Yea	Nay	No Vote	Absentee Yea	Absentee Nay
Dean Cannon	X				
Marti Coley	X				
Carl Domino	X				
Arthenia Joyner	X				
Irving Slosberg	X				
John Stargel	X				
Mark Mahon (Chair)	X				
Total Yeas: 7		Total Nays: 0			

#### Appearances:

Deceptive and Unfair Trade Practices

Alice Vickers (Lobbyist) - Proponent

Florida Legal Services

2425 Torreya

Tallahassee FL 32303

Phone: 850-385-7900

Deceptive and Unfair Trade Practices

Gary Farmer - Opponent

Academy of Trial Lawyers

2665 Executive Park Dr., #3

Weston FL 33331

Phone: 954-467-6400

Deceptive and Unfair Trade Practices

Ted Smith (Lobbyist) - Proponent

FL Automobile Dealers Association

Committee meeting was reported out: Wednesday, March 15, 2006 12:25:48PM

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

Bill No. HB 1019

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

A w/o 1

Council/Committee hearing bill: Civil Justice Committee  
Representative(s) Pickens offered the following:

**Amendment (with title amendment)**

Remove everything after the enacting clause and insert:

Section 1. Section 501.975, Florida Statutes, is amended  
to read:

501.975 Definitions.--As used in this part ~~s. 501.976~~, the  
term ~~following terms shall have the following meanings:~~

(1) "Customer" includes a customer's designated agent.

(2) "Dealer" means a motor vehicle dealer as defined in s.  
320.27, but does not include a motor vehicle auction as defined  
in s. 320.27(1)(c)4.

(3) "Replacement item" means a tire, bumper, bumper  
fascia, glass, in-dashboard equipment, seat or upholstery cover  
or trim, exterior illumination unit, grill, sunroof, external  
mirror and external body cladding. The replacement of up to  
three of these items does not constitute repair of damage if  
each item is replaced because of a product defect or damaged due  
to vandalism, lot damage or act of God while the new motor  
vehicle is under the control of the dealer and the items are

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

replaced with original manufacturer equipment, ~~unless an item is replaced due to a crash, collision, or accident.~~

(4) "Threshold amount" means 3 percent of the manufacturer's suggested retail price of a motor vehicle or \$650, whichever is less.

(5) "Vehicle" means any automobile, truck, bus, recreational vehicle, or motorcycle required to be licensed under chapter 320 for operation over the roads of Florida, but does not include trailers, mobile homes, travel trailers, or trailer coaches without independent motive power.

Section 2. Section 501.9755, Florida Statutes, is created to read:

501.9755 Unlawful acts and practices.--

(1) Unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce by a dealer are unlawful.

(2) It is the intent of the Legislature that, in construing subsection (1), due consideration and great weight be given to the interpretations of the Federal Trade Commission and the federal courts relating to s. 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. s. 45(a)(1).

Section 3. Section 501.976, Florida Statutes, is amended to read:

501.976 Actionable, unfair, or deceptive acts or practices.--In addition to acts and practices actionable under s. 501.9755, it is an unfair or deceptive act or practice, actionable under the Florida Deceptive and Unfair Trade Practices Act, for a dealer to:

(1) Represent directly or indirectly that a motor vehicle is a factory executive vehicle or executive vehicle unless the ~~such~~ vehicle was purchased directly from the manufacturer or a

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

53 subsidiary of the manufacturer and the vehicle was used  
54 exclusively by the manufacturer, its subsidiary, or a dealer for  
55 the commercial or personal use of the manufacturer's,  
56 subsidiary's, or dealer's employees.

57 (2) Represent directly or indirectly that a vehicle is a  
58 demonstrator unless the vehicle complies with the definition of  
59 a demonstrator in s. 320.60(3).

60 (3) Represent the previous usage or status of a vehicle to  
61 be something that it was not, or make usage or status  
62 representations unless the dealer has correct information  
63 regarding the history of the vehicle to support the  
64 representations.

65 (4) Represent the quality of care, regularity of  
66 servicing, or general condition of a vehicle unless known by the  
67 dealer to be true and supportable by material fact.

68 (5) Represent orally or in writing that a particular  
69 vehicle has not sustained structural or substantial skin damage  
70 unless the statement is made in good faith and the vehicle has  
71 been inspected by the dealer or his or her agent to determine  
72 whether the vehicle has incurred such damage.

73 (6) Sell a vehicle without fully and conspicuously  
74 disclosing in writing at or before the consummation of sale any  
75 warranty or guarantee terms, obligations, or conditions that the  
76 dealer or manufacturer has given to the buyer. If the warranty  
77 obligations are to be shared by the dealer and the buyer, the  
78 method of determining the percentage of repair costs to be  
79 assumed by each party must be disclosed. If the dealer intends  
80 to disclaim or limit any expressed or implied warranty, the  
81 disclaimer must be in writing in a conspicuous manner and in lay  
82 terms in accordance with chapter 672 and the Magnuson-Moss  
83 Warranty--Federal Trade Commission Improvement Act.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

84 (7) Provide an express or implied warranty and fail to  
85 honor such warranty unless properly disclaimed pursuant to  
86 subsection (6).

87 (8) Misrepresent warranty coverage, application period, or  
88 any warranty transfer cost or conditions to a customer.

89 (9) Obtain signatures from a customer on contracts that  
90 are not fully completed as to all material terms at the time the  
91 customer signs or which do not reflect accurately the  
92 negotiations and agreement between the customer and the dealer.  
93 However, this subsection does not apply if, at the time of the  
94 transaction, the customer acknowledges in writing, separate from  
95 any other text, having read substantially the following notice:

96 STATUTORY CONSUMER NOTICE: A vehicle purchase or  
97 lease is a substantial transaction. Do not execute any  
98 sale or lease document if it is not fully completed or  
99 does not accurately reflect your agreement with the  
100 motor vehicle dealer. If you suffer any damages as a  
101 result of improper actions of the motor vehicle  
102 dealer, relief may be available to you under the laws  
103 of this state including part VI of chapter 501,  
104 Florida Statutes.

105 (10) Require or accept a deposit from a prospective  
106 customer prior to entering into a binding contract for the  
107 purchase and sale of a vehicle unless the customer is given a  
108 written receipt that states how long the dealer will hold the  
109 vehicle from other sale and the amount of the deposit, and  
110 clearly and conspicuously states whether and upon what  
111 conditions the deposit is refundable or nonrefundable.

112 (11) Add to the cash price of a vehicle as defined in s.  
113 520.02(2) any fee or charge other than those provided in that  
114 section and in rule 3D-50.001, Florida Administrative Code. All

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

fees or charges permitted to be added to the cash price by rule 3D-50.001, Florida Administrative Code, must be fully disclosed to customers in all binding contracts concerning the vehicle's selling price.

(12) Alter or change the odometer mileage of a vehicle except in compliance with 49 U.S.C. s. 32704.

(13) Sell a vehicle without disclosing to the customer the actual year and model of the vehicle.

(14) File a lien against a new vehicle purchased with a check unless the dealer fully discloses to the purchaser that a lien will be filed if purchase is made by check and fully discloses to the buyer the procedures and cost to the buyer for gaining title to the vehicle after the lien is filed.

(15) Increase the price of the vehicle after having accepted an order of purchase or a contract from a buyer, notwithstanding subsequent receipt of an official price change notification. The price of a vehicle may be increased after a dealer accepts an order of purchase or a contract from a buyer if:

(a) A trade-in vehicle is reappraised because it subsequently is damaged, or parts or accessories are removed;

(b) The price increase is caused by the addition of new equipment, as required by state or federal law;

(c) The price increase is caused by the revaluation of the United States dollar by the Federal Government, in the case of a foreign-made vehicle;

(d) The price increase is caused by state or federal tax rate changes; or

(e) Price protection is not provided by the manufacturer, importer, or distributor.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

(16) Advertise the price of a vehicle unless the vehicle is identified by year, make, model, and a commonly accepted trade, brand, or style name. The advertised price must include all fees or charges that the customer must pay, including freight or destination charge, dealer preparation charge, and charges for undercoating or rustproofing. State and local taxes, tags, registration fees, and title fees, unless otherwise required by local law or standard, need not be disclosed in the advertisement. When two or more dealers advertise jointly, with or without participation of the franchisor, the advertised price need not include fees and charges that are variable among the individual dealers cooperating in the advertisement, but the nature of all charges that are not included in the advertised price must be disclosed in the advertisement.

(17) Charge a customer for any predelivery service required by the manufacturer, distributor, or importer for which the dealer is reimbursed by the manufacturer, distributor, or importer.

(18) Charge a customer for any predelivery service without having printed on all documents that include a line item for predelivery service the following disclosure: "This charge represents costs and profit to the dealer for items such as inspecting, cleaning, and adjusting vehicles, and preparing documents related to the sale."

(19) Fail to disclose damage to a new motor vehicle, as defined in s. 319.001(8), of which the dealer had actual knowledge, if the dealer's actual cost of repairs exceeds the threshold amount, excluding replacement items.

~~In any civil litigation resulting from a violation of this section, when evaluating the reasonableness of an award of~~

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

~~attorney's fees to a private person, the trial court shall  
consider the amount of actual damages in relation to the time  
spent.~~

Section 4. Section 501.9765, Florida Statutes, is created  
to read:

501.9765 Violations involving a senior citizen or  
handicapped person; civil penalties; presumption.--

(1) As used in this section, the term:

(a) "Senior citizen" means a person who is 60 years of age  
or older.

(b) "Handicapped person" means any person who has a mental  
or educational impairment that substantially limits one or more  
major life activities.

(c) "Mental or educational impairment" means:

1. Any mental or psychological disorder or specific  
learning disability.

2. Any educational deficiency that substantially affects a  
person's ability to read and comprehend the terms of any  
contractual agreement entered into.

(d) "Major life activities" means functions associated  
with the normal activities of independent daily living such as  
caring for oneself, performing manual tasks, walking, seeing,  
hearing, speaking, breathing, learning, and working.

(2) Any person who willfully uses, or has willfully used,  
a method, act, or practice in violation of this part, which  
method, act, or practice victimizes or attempts to victimize a  
senior citizen or handicapped person, and commits such violation  
when she or he knew or should have known that her or his conduct  
was unfair or deceptive, is liable for a civil penalty of not  
more than \$15,000 for each such violation.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

206       (3) Any order of restitution or reimbursement based on a  
207 violation of this part committed against a senior citizen or  
208 handicapped person has priority over the imposition of civil  
209 penalties for violations of this section.

210       (4) Civil penalties collected under this section shall be  
211 deposited into the Legal Affairs Revolving Trust Fund of the  
212 Department of Legal Affairs and allocated to the Department of  
213 Legal Affairs solely for the purpose of preparing and  
214 distributing consumer-education materials, programs, and  
215 seminars to benefit senior citizens and handicapped persons or  
216 to enhance efforts to enforce this section.

217       Section 5. Section 501.977, Florida Statutes, is created  
218 to read:

219       501.977 Other individual remedies.--

220       (1) Without regard to any other remedy or relief to which  
221 a person is entitled, anyone aggrieved by a violation of this  
222 part by a dealer may bring an action against the dealer in order  
223 to obtain a declaratory judgment that an act or practice  
224 violates this part and to enjoin a dealer who has violated, is  
225 violating, or is otherwise likely to violate, this part.

226       (2) In any action brought by a person who has suffered a  
227 loss as a result of a violation of this part, the person may  
228 recover actual damages, plus attorney's fees and court costs as  
229 provided in s. 501.979. However, damages, fees, or costs are not  
230 recoverable under this section against a dealer who has, in good  
231 faith, engaged in the dissemination of claims of a manufacturer,  
232 distributor, importer or wholesaler without actual knowledge  
233 that doing so violates this part.

234       (3) In any action brought under this section, if, after  
235 the filing of a motion by the dealer, the court finds that the  
236 action is frivolous, without legal or factual merit, or brought

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

for the purpose of harassment, the court may, after hearing evidence as to the necessity therefor, require the party instituting the action to post a bond in the amount that the court finds reasonable to indemnify the defendant for any costs incurred, or to be incurred, including reasonable attorney's fees in defending the claim. This subsection does not apply to any action initiated by the enforcing authority.

Section 6. Section 501.978, Florida Statutes, is created to read:

501.978 Effect on other remedies.--

(1) The remedies of this part are in addition to remedies otherwise available for the same conduct under state or local law.

(2) This part is supplemental to, and does not preempt, local consumer-protection ordinances not inconsistent with this part.

Section 7. Section 501.979, Florida Statutes, is created to read:

501.979 Attorney's fees.--

(1) In any civil litigation resulting from an act or practice involving a violation of this part, except as provided in subsection (5) and s. 501.980, the prevailing party, after judgment in the trial court and exhaustion of all appeals, if any, shall receive his or her reasonable attorney's fees and costs from the nonprevailing party. When evaluating the reasonableness of an award of attorney's fees to a private person, the trial court shall consider the actual damages in relation to the time spent.

(2) The attorney for the prevailing party shall submit a sworn affidavit of his or her time spent on the case and his or

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

her costs incurred for all the motions, hearings, and appeals to the trial judge who presided over the civil case.

(3) The trial judge may award the prevailing party the sum of reasonable costs incurred in the action, plus reasonable attorney's fees for the hours actually spent on the case as sworn to in an affidavit.

(4) Any award of attorney's fees or costs becomes a part of the judgment and is subject to execution as the law allows.

(5) In any civil litigation initiated by the enforcing authority, the court may award to the prevailing party reasonable attorney's fees and costs if the court finds that there was a complete absence of a justiciable issue of law or fact raised by the losing party or if the court finds bad faith on the part of the losing party.

(6) In any administrative proceeding or other nonjudicial action initiated by an enforcing authority, the attorney for the enforcing authority may certify by sworn affidavit the number of hours and the cost thereof to the enforcing authority for the time spent in the investigation and litigation of the case, plus costs reasonably incurred in the action. Payment to the enforcing authority of the sum of the costs may be made, by stipulation of the parties a part, of the final order or decree disposing of the matter. The affidavit shall be attached to and become a part of the order or decree.

Section 8. Section 501.980, Florida Statutes, is created to read:

501.980 Demand letter.--

(1) As a condition precedent to initiating any civil litigation arising under this part, a claimant must give the dealer written notice of the claimant's intent to initiate

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

297 litigation against the dealer not less than 30 days before  
298 initiating the litigation.

299 (2) The notice, which must be completed in good faith,  
300 must:

301 (a) State that it is a demand letter under s. 501.980;

302 (b) State the name, address, and telephone number of the  
303 claimant;

304 (c) State the name and address of the dealer;

305 (d) Provide the date and a description of the transaction,  
306 event, or circumstance that is the basis of the claim;

307 (e) Describe with specificity the underlying facts and how  
308 they give rise to an alleged violation of this part;

309 (f) To the extent applicable, be accompanied by all  
310 transaction or other documents upon which the claim is based or  
311 upon which the claimant is relying to assert the claim;

312 (g) Include a statement describing and providing the  
313 amount of each item of actual damages demanded by the claimant  
314 and recoverable under this part. However, to the extent the  
315 claimant cannot in good faith quantify any item of actual damage  
316 as required, the claimant shall provide a comprehensive  
317 description of the item of damage or a formula or basis by which  
318 the dealer may calculate the damage; and

319 (h) Include a description of reasonable attorney's fees  
320 incurred, if any, for which reimbursement, not to exceed \$500,  
321 is sought.

322 (3) (a) The notice of the claim must be delivered to the  
323 dealer by certified mail, return receipt requested. The postal  
324 costs shall be reimbursed to the claimant by the dealer if the  
325 dealer pays the claim and if the claimant requests reimbursement  
326 of the postal costs in the notice of claim.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

327        (b) If the dealer is a corporate entity, the notice of  
328 claim must be sent to the registered agent of the dealer as  
329 recorded with the Department of State and, in the absence of a  
330 registered agent, any person listed in s. 48.081(1).

331        (4) Notwithstanding any provision under this part to the  
332 contrary, a claimant may not initiate litigation against a  
333 dealer for a claim arising under this part related to, or in  
334 connection with, the transaction or event described in the  
335 notice of claim if the dealer pays the claimant within 30 days  
336 after receiving the notice of claim:

337        (a) The amount requested in the demand letter as specified  
338 in paragraph (2)(g);

339        (b) A surcharge of 10 percent of the amount requested in  
340 the demand letter, not to exceed \$500; and

341        (c) The attorney's fees of the claimant as specified in  
342 paragraph (2)(h), not to exceed \$500.

343        (5)(a) Subsection (4) does not apply if the notice of  
344 claim specifies nonquantified items of damage. However, the  
345 dealer may notify the claimant in writing within 30 days after  
346 receiving the notice of claim that the dealer proposes to pay  
347 the claim with modifications. The dealer must inform the  
348 claimant that he or she has placed a value on the nonquantified  
349 items of damage and intends to pay that amount in addition to  
350 the payments described in paragraphs (4)(a) and (4)(b).

351        (b) The claimant must accept or reject, in writing, the  
352 offer of the dealer within 10 business days.

353        (c) Upon receipt of the notice of acceptance, the dealer  
354 must pay the claimant the amount set forth in the proposal  
355 within 10 business days.

356        (d) A claimant may not initiate litigation against the  
357 dealer for a claim under this part which is related to, or in

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

connection with, the transaction or event described in the  
notice of claim unless:

1. The dealer ignores, rejects, or fails to timely respond  
to the claimant's demand, or fails to pay within 10 business  
days the amount accepted by claimant; or

2. The claimant does not accept the proposal of the  
dealer.

(6) If the notice of claim includes damages that arise  
from the claimant not having access to a motor vehicle due to  
the alleged conduct of the dealer, the time set forth in  
subsections (4) and (5) for the dealer to respond are reduced  
from 30 days to 10 business days.

(7) For the purpose of this section, payment by a dealer  
is deemed paid on the date a draft or other valid instrument  
that is equivalent to payment is placed in the United States  
mail, or other nationally recognized carrier, in a properly  
addressed, postpaid envelope, or, if not so posted, on the date  
of delivery.

(8) The claimant is not entitled to a surcharge in any  
proceeding initiated against a dealer under this part if the  
dealer rejects or ignores the notice of claim or the claimant  
rejects or ignores the dealer's proposal described in subsection  
(5).

(9) Notwithstanding any provision under this part to the  
contrary, a dealer is not required to pay the attorney's fees of  
the claimant in any civil action brought under this part if:

(a) The dealer, within 30 days after receiving the  
claimant's notice of claim, notifies the claimant in writing,  
and a court or arbitrator agrees, that the amount claimed is not  
supported by the facts of the transaction or event described in  
the notice of claim or by generally accepted accounting

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

principles, or includes items not properly recoverable under this part, but, nevertheless, offers to pay to the claimant the actual damages that are supported by the facts of the transaction or event described in the notice of claim and properly recoverable under this part, and the surcharge and attorney's fees, if any, described in subsection (4);

(b) The claimant's basis for rejecting or ignoring the dealer's proposal described in subsection (5) is not supported by the facts described in the notice of claim, generally accepted accounting principles, or the law; or

(c) The claimant fails to substantially comply with this section.

(10) This section applies to class action claims subject to the following conditions:

(a) In addition to describing the claimant's individual claim as required by subsection (2), the class action notice of claim to the dealer must also include:

1. The definition of the class of claimants for whom relief is being sought;

2. A description of the alleged violations of this part which have allegedly damaged the class; and

3. A statement describing and providing the amount of each item of actual damages demanded by the claimant on behalf of the class under this part or, if the claimant cannot in good faith quantify an item of actual damages, a comprehensive description of the item of damages and a formula or basis by which the dealer may calculate the damages.

(b) The surcharge set forth in subsection (4) does not apply.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

418 (c) All time periods described in this section shall be 45  
419 days in length for class actions unless further extended by a  
420 written agreement of the parties.

421 (d) If the dealer agrees to pay the damages demanded in  
422 the class action notice of claim, the dealer must notify the  
423 claimant in writing within 90 days after receiving the class  
424 action notice of claim. Within 90 days after receiving the  
425 dealer's notice of agreement, the claimant, on behalf of the  
426 class, must file a civil action to enforce the agreement, the  
427 purposes of which are to conduct proceedings to determine the  
428 fairness of the agreement to the class, to administer the agreed  
429 resolution of the class action, to provide for notification and  
430 opt-out procedures applicable in a class action, to ensure  
431 compliance with the rules of civil procedure, and to award  
432 reasonable attorney's fees to the claimant's counsel for actual  
433 time spent in connection with the proceeding. If the claimant  
434 fails to file the civil action within 90 days or if the court  
435 determines that the agreement is not fair to the class, the  
436 class action notice and the dealer's response are void.

437 (e) A dealer is not required to pay attorney's fees for  
438 the claimant in a class action proceeding if the dealer, within  
439 45 days after receiving the class action notification, informs  
440 the claimant in writing, and a court or arbitrator in a  
441 subsequent action agrees, that:

442 1. The claimant is seeking to recover damages for the  
443 class which are not properly recoverable under this part or is  
444 seeking to recover damages that are not supported by the facts  
445 of the transaction or event described in the class action notice  
446 of claim or by generally accepted accounting principles, but  
447 still offers to pay the class all damages properly recoverable  
448 and listed in the notice of claim; or

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

449       2. The claim is not a valid class claim or the class is  
450 not properly certified as a class, but the dealer offers to pay  
451 all actual damages properly recoverable by the claimant under  
452 this part as an individual which are supported by the facts of  
453 the transaction or event described in the class action notice of  
454 claim, in addition to the payments described in paragraphs  
455 (4) (b) and (4) (c).

456       (11) Payment of the actual damages or an offer to pay  
457 actual damages as set forth in this section:

458       (a) Does not constitute an admission of any wrongdoing by  
459 the dealer;

460       (b) Is protected by s. 90.408;

461       (c) Serves to release the dealer from any suit, action, or  
462 other action that could be brought under this part arising out  
463 of or in connection with the transaction, event, or occurrence  
464 described in the notice of claim;

465       (d) Serves as a defense in any action brought by the same  
466 claimant to the extent of the damages, inclusive of any  
467 surcharge, paid by the dealer; and

468       (e) Serves as a defense in any subsequent action brought  
469 by any member of the class who did not opt out in connection  
470 with the same set of operative facts as described in the class  
471 action notice of claim if the action was settled on a class-wide  
472 basis.

473       (12) The applicable statute of limitations for an action  
474 under this part is tolled for 30 days for individual claims and  
475 45 days for class action claims, or such other period of time as  
476 agreed to by the parties in writing, by the mailing of the  
477 notice required by this section.

478       (13) This section does not apply to an enforcing  
479 authority. Notwithstanding the foregoing, the Department of

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

Legal Affairs shall prepare a sample demand letter to incorporate the information required by subsection (2) for individual notice of claims and make it available to the public.

(14) If a claimant initiates civil litigation under this part without first complying with the requirements of this section, the court, upon a motion of a dealer, shall abate the litigation, without prejudice, until the claimant has complied with the provisions of this part.

Section 9. Subsection (8) is added to section 501.212, Florida Statutes, to read:

501.212 Application.--This part does not apply to:

(8) A claim brought by a person other than the enforcing authority against a dealer as defined in s. 501.975(2).

However, this subsection does not affect any action or remedy concerning residential tenancies covered under part II of chapter 83, nor does it prohibit the enforcing authority from maintaining exclusive jurisdiction to bring any cause of action authorized under this part.

Section 10. This act shall take effect upon becoming a law.

===== T I T L E A M E N D M E N T =====

Remove the entire title and insert:

An act relating to deceptive and unfair trade practices; amending s. 501.975, F.S.; providing definitions for part VI of ch. 501, F.S.; creating s. 501.9755, F.S.; declaring that unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices used by motor vehicle dealers are unlawful; providing legislative intent; amending s. 501.976, F.S.; providing an exception to the requirement that a

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

511 contract be fully complete before a customer signs a motor  
512 vehicle dealer's contract; creating s. 501.9765, F.S.; providing  
513 that a motor vehicle dealer who willfully uses a method or  
514 practice that victimizes or attempts to victimize senior  
515 citizens or handicapped persons commits an unfair or deceptive  
516 trade practice; providing a civil penalty; providing for  
517 reimbursement or restitution; creating s. 501.977, F.S.;  
518 providing additional remedies against a motor vehicle dealer;  
519 creating s. 501.978, F.S.; providing that the remedies of part  
520 VI of ch. 501, F.S., are in addition to remedies otherwise  
521 available for the same conduct under state or local law and do  
522 not preempt local consumer-protection ordinances not in conflict  
523 with part VI of ch. 501, F.S.; creating s. 501.979, F.S.;  
524 providing for attorney's fees for a prevailing party; providing  
525 procedures for receiving attorney's fees; authorizing the  
526 Department of Legal Affairs or the office of the state attorney  
527 to receive attorney's fees under certain circumstances; creating  
528 s. 501.980, F.S.; requiring that, as a condition precedent to  
529 initiating civil litigation arising under part VI of ch. 501,  
530 F.S., a claimant give the motor vehicle dealer written notice of  
531 the claimant's intent to initiate litigation against the motor  
532 vehicle dealer not less than 30 days before initiating the  
533 litigation; providing for the content of the notice of claim and  
534 the method by which the notice of claim is given to the motor  
535 vehicle dealer; providing that if the claim is paid by the motor  
536 vehicle dealer within 30 days after receiving the notice of  
537 claim, together with a surcharge of 10 percent of the alleged  
538 actual damages, the claimant may not initiate litigation against  
539 the motor vehicle dealer, and the motor vehicle dealer is  
540 obligated to pay only \$500 for the attorney's fees of the  
541 claimant; providing that the surcharge not exceed \$500;

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

542 providing procedures for damage claims that are nonquantifiable;  
543 providing expedited procedures when the claimant is without  
544 access to a motor vehicle; providing that a claimant is not  
545 entitled to a surcharge under certain circumstances; providing  
546 that a motor vehicle dealer is not obligated to pay the  
547 claimant's attorney's fees under certain circumstances;  
548 providing that the presuit-notification procedures apply to  
549 class actions; providing that any applicable statute of  
550 limitations is tolled for 30 days for individual claims and 90  
551 days for class action claims; providing that the act does not  
552 affect the statutory responsibilities of the Attorney General or  
553 the office of the state attorney; requiring a court to abate  
554 litigation, without prejudice, until the claimant has complied  
555 with the required procedures; amending s. 501.212, F.S.;  
556 exempting motor vehicle dealers from the provisions of part II  
557 of ch. 501, F.S.; providing an exception for the enforcing  
558 authority; providing an effective date.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1a (for drafter's use only)

Bill No. **HB 1019**

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

*A w/o 1a*

Council/Committee hearing bill: Civil Justice Committee  
Representative(s) offered the following:

**Amendment to Amendment ( 1 ) by Representative Pickens**

Remove line(s) 493-498.

## COMMITTEE MEETING REPORT

### Civil Justice Committee

3/15/2006 10:00:00AM

Location: 24 HOB

HB 1047 : Parental Relocation with a Child

☒ Favorable With Committee Substitute

	Yea	Nay	No Vote	Absentee Yea	Absentee Nay
Dean Cannon	X				
Marti Coley	X				
Carl Domino	X				
Arthenia Joyner	X				
Irving Slosberg	X				
John Stargel	X				
Mark Mahon (Chair)	X				
Total Yeas: 7		Total Nays: 0			

#### Appearances:

Parental Relocation with a Child

Diane M. Kirigin - Proponent

The Florida Bar

200 W. Atlantic Ave.

Delray Beach FL 33444

Phone: 561-274-1410

Parental Relocation with a Child

Amy Hirkman, Esq. - Proponent

Florida Bar

Boynton Beach FL

Phone: 561-732-7030

Parental Relocation with a Child

Fred Dudley (Lobbyist) - Proponent

Family Law Section

106. E. College Ave., Suite 1200

Tallahassee FL 32301

Phone: 850-521-8013

Committee meeting was reported out: Wednesday, March 15, 2006 12:25:48PM

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

Bill No. HB 1047

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

A 1  
W/O

Council/Committee hearing bill: Civil Justice Committee

Representative(s) Stargel offered the following:

**Amendment (with title amendments)**

Remove line(s) 24-189 and insert:

Section 1. Paragraph (d) of subsection (2) of section  
61.13, Florida Statutes, is amended to read:

61.13 Custody and support of children; visitation rights;  
power of court in making orders.--

(2)

~~(d) No presumption shall arise in favor of or against a  
request to relocate when a primary residential parent seeks to  
move the child and the move will materially affect the current  
schedule of contact and access with the secondary residential  
parent. In making a determination as to whether the primary  
residential parent may relocate with a child, the court must  
consider the following factors:~~

~~1. Whether the move would be likely to improve the general  
quality of life for both the residential parent and the child.~~

~~2. The extent to which visitation rights have been allowed  
and exercised.~~

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

~~3. Whether the primary residential parent, once out of the jurisdiction, will be likely to comply with any substitute visitation arrangements.~~

~~4. Whether the substitute visitation will be adequate to foster a continuing meaningful relationship between the child and the secondary residential parent.~~

~~5. Whether the cost of transportation is financially affordable by one or both parties.~~

~~6. Whether the move is in the best interests of the child.~~

Section 2. Section 61.13001, Florida Statutes, is created to read:

61.13001 Parental relocation with a child.--

(1) DEFINITIONS.--As used in this section:

(a) "Change of residence address" means the relocation of a child to a primary residence more than 50 miles away from his or her current primary place of residence, unless the move places the primary residence of the minor child less than 50 miles from the nonresidential parent.

(b) "Child" means any person who is under the jurisdiction of a state court pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act or is the subject of any order granting to a parent or other person any right to residential care, custody, or visitation as provided under state law.

(c) "Court" means the circuit court in an original proceeding which has proper venue and jurisdiction in accordance with the Uniform Child Custody Jurisdiction and Enforcement Act, the circuit court in the county in which either parent and the child reside, or the circuit court in which the original action was adjudicated.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

51        (d) "Other person" means an individual who is not the  
52 parent and who, by court order, maintains the primary residence  
53 of a child or has visitation rights with a child.

54        (e) "Parent" means any person so named by court order or  
55 express written agreement that is subject to court enforcement  
56 or a person reflected as a parent on a birth certificate and in  
57 whose home a child maintains a primary or secondary residence.

58        (f) "Person entitled to be the primary residential parent  
59 of a child" means a person so designated by court order or by an  
60 express written agreement that is subject to court enforcement  
61 or a person seeking such a designation, or, when neither parent  
62 has been designated as primary residential parent, the person  
63 seeking to relocate with a child.

64        (g) "Principal or primary residence of a child" means the  
65 home of the designated primary residential parent. For purposes  
66 of this section only, when rotating custody is in effect, each  
67 parent shall be considered to be the primary residential parent.

68        (h) "Relocation" means a change in the principal residence  
69 of a child for a period of 60 consecutive days or more but does  
70 not include a temporary absence from the principal residence for  
71 purposes of vacation, education, or the provision of health care  
72 for the child.

73        (2) NOTICE OF INTENT TO RELOCATE WITH A CHILD.--A parent  
74 who is entitled to primary residence of the child shall notify  
75 the other parent, and every other person entitled to visitation  
76 with the child, of a proposed relocation of the child's  
77 principal residence. The form of notice shall be according to  
78 this section:

79        (a) The parent seeking to relocate shall prepare a Notice  
80 of Intent to Relocate. The following information must be

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

81 included with the Notice of Intent to Relocate and signed under  
82 oath under penalty of perjury:

83 1. A description of the location of the intended new  
84 residence, including the state, city, and specific physical  
85 address, if known.

86 2. The mailing address of the intended new residence, if  
87 not the same as the physical address, if known.

88 3. The home telephone number of the intended new  
89 residence, if known.

90 4. The date of the intended move or proposed relocation.

91 5. A detailed statement of the specific reasons for the  
92 proposed relocation of the child. If one of the reasons is based  
93 upon a job offer which has been reduced to writing, that written  
94 job offer must be attached to the Notice of Intent to Relocate.

95 6. A proposal for a revised postrelocation schedule of  
96 visitation with the child.

97 7. Substantially the following statement, in all capital  
98 letters and in the same or larger font size than the remainder  
99 of the notice:

100  
101 AN OBJECTION TO THE PROPOSED RELOCATION MUST BE MADE IN  
102 WRITING, FILED WITH THE COURT, AND SERVED ON THE PARENT OR  
103 OTHER PERSON SEEKING TO RELOCATE WITHIN 30 DAYS AFTER  
104 SERVICE OF THIS NOTICE OF INTENT TO RELOCATE. IF YOU FAIL  
105 TO TIMELY OBJECT TO THE RELOCATION, THE RELOCATION WILL BE  
106 ALLOWED WITHOUT FURTHER NOTICE AND WITHOUT A HEARING.

107  
108 8. The mailing address of the parent or other person  
109 seeking to relocate to which the objection filed under

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

subsection (4) to the Notice of Intent to Relocate should be sent.

The contents of the Notice of Intent to Relocate are not privileged. For purposes of encouraging amicable resolution of the relocation issue, a copy of the Notice of Intent to Relocate shall initially not be filed with the court but instead served upon the nonrelocating parent, other person, and every other person entitled to visitation with the child and the original thereof shall be maintained by the parent or other person seeking to relocate.

(b) The parent seeking to relocate shall also prepare a Certificate of Filing Notice of Intent to Relocate. The certificate shall certify the date that the Notice of Intent to Relocate was served on the other parent and on every other person entitled to visitation with the child.

(c) The Notice of Intent to Relocate, and the Certificate of Filing Notice of Intent to Relocate, shall be served on the other parent and on every other person entitled to visitation with the child. Where there is a pending court action regarding the child, service of process may be according to court rule. Otherwise, service of process shall be according to chapters 48 and 49.

(d) A person giving notice of a proposed relocation or change of residence address under this section has a continuing duty to provide current and updated information required by this section when that information becomes known.

(e) If the other parent and any other person entitled to visitation with the child fails to timely file an objection, the relocation shall be allowed and the court shall enter an order.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

140 If an objection is timely filed, the burden shifts to the parent  
141 or person seeking to relocate to initiate court proceedings to  
142 obtain court permission to relocate prior to doing so.

143 (f) The act of relocating the child after failure to  
144 comply with the notice of intent to relocate procedure described  
145 in this subsection subjects the party in violation thereof to  
146 contempt and other proceedings to compel the return of the child  
147 and may be taken into account by the court in any initial or  
148 postjudgment action seeking a determination or modification of  
149 residence, custody, or visitation with the child as:

150 1. A factor in making a determination regarding the  
151 relocation of a child.

152 2. A factor in determining whether residence or contact,  
153 access, visitation, and time-sharing arrangements should be  
154 modified.

155 3. A basis for ordering the temporary or permanent return  
156 of the child.

157 4. Sufficient cause to order the parent or other person  
158 seeking to relocate the child to pay reasonable expenses and  
159 attorney's fees incurred by the party objecting to the  
160 relocation.

161 5. For the award of reasonable attorney's fees and costs,  
162 including interim travel expenses incident to visitation or  
163 securing the return of the child.

164 (3) RELATION TO PUBLIC RECORDS LAWS.--If the parent or  
165 other person seeking to relocate a child, or if the child, is  
166 entitled to prevent disclosure of location information pursuant  
167 to any public records exemption applicable to that person, the  
168 court may enter any order necessary to modify the disclosure

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

requirements of this section in compliance with the public  
records exemption.

(4) CONTENT OF OBJECTION TO RELOCATION.--An objection  
seeking to prevent the relocation of a child shall be verified  
and served within 30 days after service of the Notice of Intent  
to Relocate. The objection shall include the specific factual  
basis supporting the reasons for seeking a prohibition of the  
relocation, including a statement of the amount of participation  
or involvement the objecting party currently has or has had in  
the life of the child.

===== T I T L E A M E N D M E N T =====

Remove line(s) 3 and insert:  
amending s. 61.13, F.S.; deleting standards for determining  
whether to allow a primary residential parent to move a child;  
creating s. 61.13001, F.S.; providing definitions;

## COMMITTEE MEETING REPORT

### Civil Justice Committee

3/15/2006 10:00:00AM

Location: 24 HOB

HB 1141 : Conveyances of Land

☒

Favorable

	Yea	Nay	No Vote	Absentee Yea	Absentee Nay
Dean Cannon	X				
Marti Coley	X				
Carl Domino	X				
Arthenia Joyner	X				
Irving Slosberg	X				
John Stargel	X				
Mark Mahon (Chair)	X				
Total Yeas: 7		Total Nays: 0			

#### Appearances:

Conveyances of Land

Martha Edenfield (Lobbyist) - Proponent

The Real Property Probate & Trust

P. O. Box 10095

Tallahassee FL 32302

Phone: 850-222-3533

Committee meeting was reported out: Wednesday, March 15, 2006 12:25:48PM

## COMMITTEE MEETING REPORT

### Civil Justice Committee

3/15/2006 10:00:00AM

Location: 24 HOB

HB 1163 : Vacation and Timeshare Plans

☒ Favorable With Committee Substitute

	Yea	Nay	No Vote	Absentee Yea	Absentee Nay
Dean Cannon	X				
Marti Coley	X				
Carl Domino	X				
Arthenia Joyner	X				
Irving Slosberg	X				
John Stargel	X				
Mark Mahon (Chair)	X				
Total Yeas: 7		Total Nays: 0			

#### Appearances:

Vacation and Timeshare Plans

Brian H. Bibeau (Lobbyist) - Proponent

American Resort Development Assn.

123 S. Calhoun St.

Tallahassee FL 32301

Phone: 850-222-7500

Committee meeting was reported out: Wednesday, March 15, 2006 12:25:48PM

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

Bill No. HB 1163

COUNCIL/COMMITTEE ACTION

ADOPTED — (Y/N)  
ADOPTED AS AMENDED — (Y/N)  
ADOPTED W/O OBJECTION — (Y/N)  
FAILED TO ADOPT — (Y/N)  
WITHDRAWN — (Y/N)  
OTHER —

A 1  
W/O

Council/Committee hearing bill: Civil Justice Committee  
Representative(s) Mealor offered the following:

**Amendment (with title amendment)**

Remove everything after the enacting clause and insert:

Section 1. Paragraph (e) of subsection (3) is amended, and  
subsection (11) is added, to section 721.03, Florida Statutes,  
to read:

721.03 Scope of chapter.--

(3) A timeshare plan which is subject to the provisions of  
chapter 718 or chapter 719, if fully in compliance with the  
provisions of this chapter, is exempt from the following:

(e) Part VI of chapter 718 and part VI of chapter 719,  
relating to conversion of existing improvements to the  
condominium or cooperative form of ownership, respectively,  
provided that a developer converting existing improvements to a  
timeshare condominium or timeshare cooperative must comply with  
ss. 718.606, 718.608, 718.61, and 718.62, or ss. 719.606,  
719.608, 719.61, and 719.62, if applicable, and, if the existing  
improvements received a certificate of occupancy more than 18  
months before such conversion, one of the following:

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

22        1. The accommodations and facilities shall be renovated  
23 and improved to a condition such that the remaining useful life  
24 in years of the roof, plumbing, air-conditioning, and any  
25 component of the structure which has a useful life less than the  
26 useful life of the overall structure is equal to the useful life  
27 of accommodations or facilities that would exist if such  
28 accommodations and facilities were newly constructed and not  
29 previously occupied.

30        2. The developer shall fund reserve accounts for capital  
31 expenditures and deferred maintenance for the roof, plumbing,  
32 air-conditioning, and any component of the structure the useful  
33 life of which is less than the useful life of the overall  
34 structure. The reserve accounts shall be funded for each  
35 component in an amount equal to the product of the estimated  
36 current replacement cost of such component as of the date of  
37 such conversion (as disclosed and substantiated by a certificate  
38 under the seal of an architect or engineer authorized to  
39 practice in this state) multiplied by a fraction, the numerator  
40 of which shall be the age ~~remaining life~~ of the component in  
41 years (as disclosed and substantiated by a certificate under the  
42 seal of an architect or engineer authorized to practice in this  
43 state) and the denominator of which shall be the total useful  
44 life of the component in years (as disclosed and substantiated  
45 by a certificate under the seal of an architect or engineer  
46 authorized to practice in this state). Alternatively, the  
47 reserve accounts may be funded for each component in an amount  
48 equal to the amount that, except for the application of this  
49 subsection, would be required to be maintained pursuant to s.  
50 718.618(1) or s. 719.618(1). The developer shall fund the  
51 reserve accounts contemplated in this subparagraph out of the  
52 proceeds of each sale of a timeshare interest, on a pro rata

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

basis, in an amount not less than a percentage of the total amount to be deposited in the reserve account equal to the percentage of ownership allocable to the timeshare interest sold. When an owners' association makes an expenditure of reserve account funds before the developer has initially sold all timeshare interests, the developer shall make a deposit in the reserve account if the reserve account is insufficient to pay the expenditure. Such deposit shall be at least equal to that portion of the expenditure which would be charged against the reserve account deposit that would have been made for any such timeshare interest had the timeshare interest been initially sold. When a developer deposits amounts in excess of the minimum reserve account funding, later deposits may be reduced to the extent of the excess funding.

3. The developer shall provide each purchaser with a warranty of fitness and merchantability pursuant to s. 718.618(6) or s. 719.618(6).

(11) A seller may offer timeshare interests in a real property timeshare plan located outside of this state without filing a public offering statement for such out-of-state real property timeshare plans pursuant to s. 721.07 or s. 721.55, provided all of the following criteria have been satisfied:

(a) The seller shall provide a disclosure statement to each prospective purchaser of such out-of-state timeshare plan. The disclosure statement shall contain information that is substantively equivalent to the disclosures required to be provided for similar timeshare plans pursuant to s. 721.07 or s. 721.55, whichever is applicable. The disclosure statement shall also include the exhibits that are required by s. 721.07(5)(ff)1., 2., 3., 4., 5., 7., 8., and 20.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

83        (b) With respect to any offer for an out-of-state  
84 timeshare plan made pursuant to this subsection, the delivery by  
85 the seller to a prospective purchaser of the disclosure  
86 statement required by paragraph (a) shall be deemed to satisfy  
87 any requirement of this chapter regarding a public offering  
88 statement.

89        (c) The seller shall utilize and furnish to each purchaser  
90 of an out-of-state timeshare plan offered pursuant to this  
91 subsection a fully completed and executed copy of a purchase  
92 contract that contains the statement set forth in s.  
93 721.065(2)(c) in conspicuous type located immediately prior to  
94 the space in the contract reserved for the purchaser's  
95 signature. The contract shall also contain the initial purchase  
96 price and any additional charges to which the purchaser may be  
97 subject in connection with the purchase of the timeshare plan,  
98 such as financing, or that will be collected from the purchaser  
99 on or before closing, such as the current year's annual  
100 assessment for common expenses.

101        (d) All purchase contracts for out-of-state timeshare  
102 plans offered pursuant to this subsection must also contain the  
103 following statements in conspicuous type:

104  
105        This timeshare plan has not been reviewed or approved by  
106 the State of Florida.

107  
108        The timeshare interest you are purchasing requires certain  
109 procedures to be followed in order for you to use your  
110 interest. These procedures may be different from those  
111 followed in other timeshare plans. You should read and  
112 understand these procedures prior to purchasing.  
113

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

114 (e)1. An out-of-state timeshare plan may only be offered  
115 pursuant to this subsection by the seller on behalf of:

116 a. The developer of a timeshare plan that has been  
117 approved by the division within the preceding 7 years pursuant  
118 to s. 721.07 or s. 721.55, or concerning which an amendment by  
119 the developer has been approved by the division within the  
120 preceding 7 years, which timeshare plan has neither been  
121 terminated nor withdrawn; or

122 b. A developer under common ownership or control with a  
123 developer described in sub-subparagraph a., provided that any  
124 common ownership shall constitute at least a 50-percent  
125 ownership interest.

126 2. An out-of-state timeshare plan may only be offered  
127 pursuant to this subsection to a person who already owns a  
128 timeshare interest in a timeshare plan filed by a developer  
129 described in subparagraph 1.

130 (f)1. Except for ss. 721.06, 721.065, 721.07, 721.27,  
131 721.55, and 721.58, any out-of-state timeshare plan offered  
132 pursuant to this subsection must meet all requirements of this  
133 chapter. The out-of-state timeshare plan shall also be eligible  
134 for any exemptions provided by this chapter.

135 2. Any escrow account required to be established by s.  
136 721.08 for any out-of-state timeshare plan offered under this  
137 subsection may be maintained in the situs jurisdiction.

138 (g) Any seller of an out-of-state timeshare plan offered  
139 pursuant to this subsection shall be required to provide notice  
140 of such plan to the division on a form prescribed by the  
141 division, along with payment of a one-time fee not to exceed  
142 \$1,000 per filing.

143 Section 2. Subsection (25) of section 721.05, Florida  
144 Statutes, is amended to read:

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

145        721.05 Definitions.--As used in this chapter, the term:  
146        (25) "One-to-one purchaser to accommodation ratio" means  
147 the ratio of the number of purchasers eligible to use the  
148 accommodations of a timeshare plan on a given day to the number  
149 of accommodations available for use within the plan on that day,  
150 such that the total number of purchasers eligible to use the  
151 accommodations of the timeshare plan during any 12-month period  
152 ~~a given calendar year~~ never exceeds the total number of  
153 accommodations available for use in the timeshare plan during  
154 that 12-month period year. For purposes of calculation under  
155 this subsection, each purchaser must be counted at least once,  
156 and no individual timeshare unit may be counted more than 365  
157 times per 12-month period ~~calendar year~~ (or more than 366 times  
158 per leap year). A purchaser who is delinquent in the payment of  
159 timeshare plan assessments shall continue to be considered  
160 eligible to use the accommodations of the timeshare plan for  
161 purposes of this subsection notwithstanding any application of  
162 s. 721.13(6).

163        Section 3. Paragraph (b) of subsection (1), and paragraph  
164 (c) of subsection (3), of section 721.13, Florida Statutes, are  
165 amended to read:

166        721.13 Management.--

167        (1)

168        (b)1. With respect to a timeshare plan which is also  
169 regulated under chapter 718 or chapter 719, or which contains a  
170 mandatory owners' association, the board of administration of  
171 the owners' association shall be considered the managing entity  
172 of the timeshare plan.

173        2. During any period of time in which such owners'  
174 association has entered into a contract with a manager or  
175 management firm to provide some or all of the management

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

176 services to the timeshare plan, both the board of administration  
177 and the manager or management firm shall be considered the  
178 managing entity of the timeshare plan and shall be jointly and  
179 severally responsible for the faithful discharge of the duties  
180 of the managing entity.

181 3. An owners' association which is the managing entity of  
182 a timeshare plan that includes condominium units or cooperative  
183 units shall not be considered a condominium association pursuant  
184 to the provisions of chapter 718 or a cooperative association  
185 pursuant to the provisions of chapter 719, unless such owners'  
186 association also operates the entire condominium pursuant to s.  
187 718.111 or the entire cooperative pursuant to s. 719.104.

188 4.a. Notwithstanding anything to the contrary contained in  
189 chapter 718 or chapter 719, timeshare condominium associations  
190 and timeshare cooperative associations created after July 1,  
191 2006 are not subject to the provisions of ss. 718.301(1)-(2) or  
192 ss. 719.301(1)-(2), unless a majority of those present at a duly  
193 called meeting of the association other than any developer,  
194 which majority shall constitute at least 15 percent of the total  
195 voting interests other than those owned by any developer, vote  
196 to hold a transfer of control election. A meeting to decide  
197 whether to have a transfer of control election shall be  
198 conducted upon the written request of 15 percent of the total  
199 voting interests other than those owned by any developer. If a  
200 transfer of control election is approved, that election when  
201 held shall entitle purchasers other than a developer to elect a  
202 majority of the members of the board of administration of the  
203 association.

204 b. No transfer of control election held pursuant to this  
205 subparagraph shall be held prior to the time that transfer of  
206 majority control of the members of the board of administration

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

207 of the association would otherwise be required by the provisions  
208 of s. 718.301(1) or s. 719.301(1). After that time has been  
209 reached, the election approved as provided in sub-subparagraph  
210 a., shall be held with 75 days after the vote authorizing a  
211 transfer of control election. After purchasers other than a  
212 developer vote to elect a majority of the members of the board  
213 of administration of the association, a developer may exercise  
214 the right to vote any developer-owned timeshare interests in the  
215 same manner as any purchaser except for purposes of reacquiring  
216 control of the association or selecting a majority of the  
217 members of the board of administration.

218 (3) The duties of the managing entity include, but are not  
219 limited to:

220 (c)3. With respect to any timeshare plan that has a  
221 managing entity that is an owners' association, reserves may be  
222 waived or reduced by a majority vote of those voting interests  
223 that are present, in person or by proxy, at a duly called  
224 meeting of the owner's association. If a meeting of the  
225 purchasers has been called to determine whether to waive or  
226 reduce the funding of reserves, and no such result is achieved  
227 or a quorum is not attained, the reserves as included in the  
228 budget shall go into effect.

229 Section 4. Subsection (1) of section 721.165, Florida  
230 Statutes, is amended to read:

231 721.165 Insurance.--

232 (1) The seller, initially, and thereafter the managing  
233 entity, shall be responsible for obtaining insurance to protect  
234 the accommodations and facilities of the timeshare plan in an  
235 amount equal to the replacement cost of such accommodations and  
236 facilities. Any insurance, regardless of any requirement in the  
237 timeshare instrument for coverage for "full insurable value,"

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

238 "replacement cost," or the like, may include reasonable  
239 deductibles as determined initially by the seller and thereafter  
240 by the managing entity. Failure to obtain and maintain the  
241 insurance required by this subsection during any period of  
242 developer control of the managing entity shall constitute a  
243 breach of s. 721.13(2)(a) by the managing entity, unless the  
244 managing entity can show that, despite such failure, it  
245 exercised due diligence to obtain and maintain the insurance  
246 required by this subsection.

247 Section 5. This act shall take effect July 1, 2006.

248  
249 ===== T I T L E A M E N D M E N T =====

250 Remove the entire title and insert:

251 An act relating to vacation and timeshare plans; amending  
252 s. 721.03, F.S.; revising the formula for funding reserve  
253 accounts; authorizing a seller to offer timeshare  
254 interests in timeshare plans located outside of this state  
255 without filing a public offering statement for such out-  
256 of-state timeshare plan; providing criteria for such  
257 offers; amending s. 721.05, F.S.; revising the definition  
258 of the term "one-to-one purchaser to accommodation ratio";  
259 amending s. 721.13, F.S.; providing that timeshare  
260 condominium associations and timeshare cooperative  
261 associations are not subject to certain provisions  
262 relating to transfer of association control; authorizing  
263 reserves to be waived or reduced; amending s. 721.165,  
264 F.S.; authorizing certain insurance to include reasonable  
265 deductibles as determined initially by the seller and  
266 thereafter by the managing entity; providing an effective  
267 date.  
268

## COMMITTEE MEETING REPORT

### Civil Justice Committee

3/15/2006 10:00:00AM

Location: 24 HOB

PCB CJ 06-02 : Adoption Records

☒ Favorable With Amendments

	Yea	Nay	No Vote	Absentee Yea	Absentee Nay
Dean Cannon	X				
Marti Coley	X				
Carl Domino	X				
Arthenia Joyner	X				
Irving Slosberg	X				
John Stargel	X				
Mark Mahon (Chair)	X				
Total Yeas: 7		Total Nays: 0			

#### Appearances:

Adoption Records

Madonna Finney (Lobbyist) - Proponent

Florida Adoption Council

Box 10728

Tallahassee FL 32302

Phone: 850-577-3077

Committee meeting was reported out: Wednesday, March 15, 2006 12:25:48PM

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

Bill No. PCB CJ 06-02

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

A 1  
w/o

Council/Committee hearing bill: Civil Justice Committee  
Representative(s) Mahon offered the following:

**Amendment (with title amendment)**

Remove everything after the enacting clause and insert:

Section 1. Subsections (1) and (5) of section 63.054,  
Florida Statutes, are amended to read:

63.054 Actions required by an unmarried biological father  
to establish parental rights; Florida Putative Father Registry.-

(1) In order to preserve the right to notice and consent  
to an adoption under this chapter, an unmarried biological  
father must, as the "registrant," file a notarized claim of  
paternity form with the Florida Putative Father Registry  
maintained by the Office of Vital Statistics of the Department  
of Health and shall include therein confirmation of his  
willingness and intent to support the child for whom paternity  
is claimed in accordance with state law. The claim of paternity  
may be filed at any time prior to the child's birth, but a claim  
of paternity may not be filed after the date a petition is filed  
for termination of parental rights. In each proceeding for  
termination of parental rights, the petitioner shall submit to

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

23 the Office of Vital Statistics of the Department of Health a  
24 copy of the petition for termination of parental rights. The  
25 Office of Vital Statistics of the Department of Health shall not  
26 record a claim of paternity after the date that a petition for  
27 termination of parental rights is filed.

28 (5) The registrant may, at any time prior to the birth of  
29 the child for whom paternity is claimed, execute a notarized  
30 written revocation of the claim of paternity previously filed  
31 with the Florida Putative Father Registry, and upon receipt of  
32 such revocation, the claim of paternity shall be deemed null and  
33 void. If a court determines that a registrant is not the father  
34 of the minor, or has no parental rights, the court shall order  
35 the Department of Health ~~the department~~ to remove the  
36 registrant's name from the registry.

37 Section 2. Subsection (4) of section 63.062, Florida  
38 Statutes, is amended to read:

39 63.062 Persons required to consent to adoption; affidavit  
40 of nonpaternity; waiver of venue.--

41 (4) Any person whose consent is required under paragraph  
42 (1)(b), or any other man, ~~paragraphs (1)(c)-(e)~~ may execute an  
43 irrevocable affidavit of nonpaternity in lieu of a consent under  
44 this section and by doing so waives notice to all court  
45 proceedings after the date of execution. An affidavit of  
46 nonpaternity must be executed as provided in s. 63.082. The  
47 affidavit of nonpaternity may be executed prior to the birth of  
48 the child. The person executing the affidavit must receive  
49 disclosure under s. 63.085 prior to signing the affidavit.

50 Section 3. Section 63.182, Florida Statutes, is amended to  
51 read:

52 63.182 Statute of repose.--

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

(1) Notwithstanding s. 95.031 or s. 95.11 or any other statute, an action or proceeding of any kind to vacate, set aside, or otherwise nullify a judgment of adoption or an underlying judgment terminating parental rights on any ground may not be filed more than 1 year after entry of the judgment terminating parental rights.

(2)(a) Except for the specific persons expressly entitled to be given notice of an adoption in accordance with this chapter, the interest which entitles a person to notice of an adoption must be direct, financial, and immediate and the person must show that he or she will gain or lose by the direct legal operation and effect of the judgment. A showing of an indirect, inconsequential, or contingent interest is wholly inadequate and a person with this indirect interest lacks standing to set aside a judgment of adoption.

(b) This subsection is remedial and shall apply to all adoptions, including those in which a judgment of adoption has already been entered.

Section 4. This act shall take effect upon becoming law.

===== T I T L E   A M E N D M E N T =====

Remove the entire title and insert:

An act relating to adoption; amending s. 63.054, F.S.; requiring a petitioner in a case for termination of parental rights proceeding to provide notice to the Department of Health; requiring the Department of Health to not record a claim of paternity after the date that a termination of parental rights is recorded; requiring the Department of Health to remove a registrant's name from the Florida Putative Father Registry upon a finding that the registrant has not parental rights; amending s.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1 (for drafter's use only)

84 63.062, F.S.; modifying consent required for adoption;  
85 amending s. 63.182, F.S.; providing that the interest that  
86 entitles a person to notice of an adoption proceeding must  
87 be direct, financial, and immediate; providing an  
88 exception; providing that a showing of an indirect,  
89 inconsequential, or contingent interest is wholly  
90 inadequate; providing construction and applicability;  
91 providing an effective date.

# COMMITTEE MEETING REPORT

## Civil Justice Committee

3/15/2006 10:00:00AM

Location: 24 HOB

### Summary:

#### Civil Justice Committee

*Wednesday March 15, 2006 10:00 am*

HB 789 CS	Favorable With Committee Substitute	Yeas: 7	Nays: 0
HB 907	Favorable With Committee Substitute	Yeas: 7	Nays: 0
HB 1019	Favorable With Committee Substitute	Yeas: 7	Nays: 0
HB 1047	Favorable With Committee Substitute	Yeas: 7	Nays: 0
HB 1141	Favorable	Yeas: 7	Nays: 0
HB 1163	Favorable With Committee Substitute	Yeas: 7	Nays: 0
PCB CJ 06-02	Favorable With Amendments	Yeas: 7	Nays: 0

Committee meeting was reported out: Wednesday, March 15, 2006 12:25:48PM